

**Federal Communications Commission**

DA 93-1480

ORIGINAL

FCC MAIL SECTION  
Before the  
Federal Communications Commission  
Washington, D.C. 20554

DEC 28 2 28 PM '93

MM Docket No. 93-313 ✓

In the Matter of

Amendment of Section 73.202(b), RM-8390  
Table of Allotments,  
FM Broadcast Stations.  
(Bay Minette and Daphne, Alabama)

**NOTICE OF PROPOSED RULE MAKING**

**Adopted: December 7, 1993; Released: December 28, 1993**

**Comment Date: February 18, 1994**  
**Reply Comment Date: March 4, 1994**

By the Acting Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed on behalf of Baldwin Broadcasting Company ("petitioner"), licensee of Station WFMI(FM), Channel 293C3, Bay Minette, Alabama, requesting the reallocation of its channel to Daphne, Alabama, and modification of its license accordingly.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules. In this regard, petitioner advises that the requested reallocation to Daphne is mutually exclusive with the present allotment of Channel 293C3 at Bay Minette, since it does not intend to move from its present transmitter site. The distance between Daphne and Bay Minette at Station WFMI(FM)'s current transmitter site is 10.4 kilometers (6.4 miles) whereas a distance of 153 kilometers (95 miles) is required by Section 73.207(b)(1) of the Commission's Rules between Class C3 co-channels. Petitioner advises that, operating from its present site with existing facilities, Station WFMI(FM) currently places a 70 dBu signal over the entire community of Daphne. Additionally, petitioner alleges that the reallocation of Channel 293C3 to Daphne would result in a preferential arrangement of allotments as Daphne (population 11,290),<sup>1</sup> would receive its first local aural transmission service from Station WFMI(FM). Bay Minette (population 7,168), would continue to receive city grade service from Station WNSP (FM), Channel 288A, as well as local aural transmission service from daytime Station WBCA(AM). In further support of its proposal, petitioner advises that Daphne is a substantial community which contains its own social, cultural, religious and educational institutions, its own governing body, and provides municipal services to its residents. Additionally, petitioner advises that Daphne is the most rapidly expanding community in

Baldwin County, due partially to an annexation which occurred in 1988. Moreover, petitioner states that Daphne is not located in an Urbanized Area.

**Technical Statement**

3. A staff analysis confirms that Channel 293C3 can be allotted to Daphne in conformity with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules, at the presently licensed site of Station WFMI(FM), at coordinates 30-40-45 and 87-50-24.

4. We believe the proposal warrants consideration. The proposal would not deprive Bay Minette of its only local transmission service, and its use is mutually exclusive with Daphne. However, we request that petitioner provide additional information regarding the public interest benefits that would result from the reallocation of Channel 293C3 to Daphne, Alabama, since no reception change in the present technical facilities of Station WFMI(FM) is proposed to accommodate the proposal.

5. In light of the above, we shall propose to modify Station WFMI(FM) as requested, to specify Daphne, Alabama, as its community of license. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest nor require that petitioner demonstrate the availability of an additional equivalent channel at Daphne.

6. Accordingly, we seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

City	Channel No.	
	Present	Proposed
Bay Minette, Alabama	288A, 293C3	288A <sup>2</sup>
Daphne, Alabama	--	293C3

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before **February 18, 1994**, and reply comments on or before **March 4, 1994**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

<sup>1</sup> Population figures cited herein were taken from the 1990 U.S. Census.

<sup>2</sup> A separate proceeding is pending before the Commission to

substitute Channel 288C3 for Channel 288A at Bay Minette in MM Docket No. 91-303. See 6 FCC Rcd 6012 (1991).

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9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

#### FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
 Acting Chief, Allocations Branch  
 Policy and Rules Division  
 Mass Media Bureau

#### APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial

comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.